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KAREN J. MESSICK, ESQ.
C/O KOS PHARMACEUTICALS, INC.
1001 BRICKELL BAY DRIVE, 25TH FLOOR
MIAMI, FL, 33133

In re Application of :
David Bova et al :
Serial No.: 09/470,603 : PETITION DECISION
Filed: December 22, 1999 :
Attorney Docket No.: 50454-56101US :
:

This is a response to the petition under 37 CFR 1.59(b), filed March 10, 2005, to expunge information from the above identified application.

Petitioner requests that documents submitted in an Information Disclosure Statement (IDS), filed March 10, 2005, be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The decision on the petition is held in abeyance. It is noted that a concurrently file petition to withdraw this application from issue has been granted, thus reopening prosecution for consideration of the IDS containing confidential material. Therefore, prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material, the information will be returned to applicant.

The petition to expunge is at this time **DISMISSED**.

Upon termination of prosecution of the application applicants should submit a renewed petition to expunge the proprietary material. No fee will be due for the renewed petition.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.



Bruce M. Kisliuk
Director, Technology Center 1600